



## **VIA ELECTRONIC FILING**

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Petition for Expedited Declaratory Ruling with Respect to Certain Provisions of the Indiana Revised Statutes and Indiana Administrative Code filed by the Consumer Bankers Association  
CG Docket No. 02-278**

Dear Secretary Dortch:

The Indiana Office of Utility Consumer Counselor ("OUCC") hereby submits this letter in lieu of more formal comments in the above-captioned matter. While the Office of the Indiana Attorney General is specifically responsible for implementing Indiana's No-Call list, the OUCC is an independent Indiana State agency that represents and protects the interests of all Indiana's utility consumers.<sup>1</sup> The OUCC participates actively in federal and state administrative and judicial proceedings related to utility matters.

The OUCC submits these comments in response to the Petition for Expedited Declaratory Ruling with Respect to Certain Provisions of the Indiana Revised Statutes and Indiana Administrative Code filed by the Consumer Bankers Association ("CBA") on November 19, 2004. CBA seeks preemption of certain provisions of Indiana Code 24-4.7 and Title 11 of the Indiana Administrative Code (collectively "Indiana Rules") that protect Indiana residents from telemarketers. CBA contends that the Indiana Rules are inconsistent with the FCC rules, including that the established business relationship exemption is more restrictive than the federal rules, and that the Indiana Rules should only apply to intrastate calls.

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<sup>1</sup> Indiana Code 8-1-1.1

The OUCC supports the Attorney General as to the legal issues involved in this docket. As the statutory representative of Indiana's utility ratepayers, the OUCC submits these additional comments as representative of Indiana's residential telecommunications consumers' thoughts and perspectives.

1. The number of subscribers to the Indiana No-Call List – virtually unprecedented among legislative initiatives – speaks volumes about the important interests at stake. First implemented in early 2002, approximately 1.24 million consumers had registered for the list through February 2003.<sup>2</sup> By February 2004 that number was 1.5 million<sup>3</sup>, more than half of Indiana's 2.7 million eligible residential access lines.<sup>4</sup> Today, the Indiana Office of the Attorney General puts that number in excess of 1.6 million residential telephone numbers, representing about 3.6 million Hoosiers.<sup>5</sup>
2. The number of comments filed in this docket shows unmistakably how overwhelmingly Hoosiers support the existing law. Over the six business days between January 25<sup>th</sup> and February 1st, 2005, the FCC posted 4,753 comments from Indiana residents<sup>6</sup> regarding the CBA petition. The Indiana Office of Utility Consumer Counselor (OUCC) reviewed approximately five hundred of those comments, randomly selecting several from each of the forty-eight, 100-comment pages. Of the comments reviewed, writers consistently voiced their high degree of satisfaction with the effectiveness of the Indiana Rules, while no commenter indicated that the Indiana Rules were ineffective. The OUCC found only one letter supporting CBA, that from a self-described banker.
3. The single, most pervasive comment voiced by Indiana's No-Call List supporters is their right to freedom and control in their homes. These rights have been long-recognized, and the ideas most associated with them in this context – household dinners, study time, family night, relaxation, peace, calm, quiet – dominate the Indiana consumer comments. By comparison, interruption is an unavoidable by-product of telemarketing and anathema to these ideas. The strength of the Indiana Rules is that they provide even greater protection for the rights and freedoms of consumers within their homes. Broadcast media, print media, direct mail, internet and email are alternative means by which companies can reach potential customers. All of these methods provide advertisers with reasonable access to consumers while respecting consumers' right to control of the message. Consumers

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<sup>2</sup> February 28, 2003 *Indianapolis Star*, "National No-Call List May Be Lax".

<sup>3</sup> February 23, 2004 *Indianapolis Star*, "2 Days Left To Join State No-Call List".

<sup>4</sup> Indiana Utility Regulatory Commission 2004 Telephone Report to the Regulatory Flexibility Committee of the Indiana General Assembly, page 5. 2,424,000 Statewide ILEC residential lines + 319,000 Statewide CLEC residential lines = 2,743,000.

<sup>5</sup> Indiana Attorney General's Office 1/25/05 press release, "Bankers Want Indiana's No-Call Law Watered Down"

<sup>6</sup> [http://gulfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi) , Proceeding: #02-278 (Field 1), State: Indiana (Field 13)

want freedom to decide when and where they will allow these media to reach them. Because consumers control the time and place of reception, solicitations are less disruptive or interruptive. Consumers accept that print media, television, radio and mail contain advertisements, but the consumer retains control over how much attention to pay them, as well as the time, place and manner of response, including disposal. Email and internet consumers have even greater freedom via spam filters and pop-up blockers that can effectively pre-screen, and even eliminate unsolicited marketing attempts. Customers do not feel inconvenienced or fear feeling rude by declining or ignoring the offer. More importantly, there is no follow-up pressure after the solicitation is ignored, disposed of or saved for future consideration.

4. "If I want something from my bank, I'll call them" is another popular comment. Vendors may argue that the Indiana Rules make it less likely customers will actually contact their financial institutions, but consumers' actions say otherwise. These individuals – who have affirmatively gone to the effort to opt-in to Indiana's program – are precisely the type of people who are likely to take affirmative action to let their bank or other vendor contact them. Businesses make this even easier by routinely offering customers the opportunity to be contacted either by telephone or email.
5. Indiana residential telecommunications customers continue to find value in the Indiana No-Call List despite other available alternatives. Since the Federal No-Call List took effect in October 2003, the Indiana No-Call List has continued to grow, adding approximately 100,000 new subscribers in the last 12 months. Likewise, the State of Indiana has not amended its rules to reflect the less restrictive Federal No-Call List rules. The Indiana Rules are providing additional value in terms of saving money for Indiana consumers. Consumers who previously used vertical services such as Caller-ID to screen unsolicited marketing calls have chosen to eliminate that service.
6. In the larger sense, the Indiana Rules serve business as well as consumers. While many corporations oppose restricting their ability to intrude, many other companies recognize that it's simply bad business to waste resources marketing to customers that do not wish to receive solicitations. Former FTC Chairman Tim Muris pointed this out in June, 2003 saying, "If you talk privately with telemarketers ... they will tell you that they don't want to call people who don't want to be called."<sup>7</sup>

Many Indiana telephone users have not registered for any no-call list, and CBA's members are welcome to market to all of them. However, Indiana residents who sign up for the Indiana No-Call list are entitled to the increased protection provided by the Indiana Rules.

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<sup>7</sup> <http://news.myway.com/tech/article/id/289615|technology|06-27-2003::19:23|reuters.html>

For all the foregoing reasons, the Indiana Office of Utility Consumer Counselor submits that the CBA's petition should be denied.

Respectfully Submitted,

INDIANA OFFICE OF THE  
UTILITY CONSUMER COUNSELOR

By: ROBERT G. MORK

Robert G. Mork, Esq.  
Deputy Consumer Counselor for  
Federal Affairs  
Jeffrey M. Reed, Esq.  
Assistant Consumer Counselor